

**FORSYTH COUNTY
BOARD OF COMMISSIONERS**

**BRIEFING
DRAFT**

MEETING DATE: APRIL 12, 2018

AGENDA ITEM NUMBER: 9

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT PROVIDING
OPTIONS FOR REPURCHASE OF LOT 1 OF TANGLEWOOD BUSINESS PARK**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____

COUNTY MANAGER

DATE: _____

**RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT PROVIDING OPTIONS FOR REPURCHASE OF LOT 1 OF
TANGLEWOOD BUSINESS PARK**

WHEREAS, Beaufern, LLC has negotiated the attached Agreement for Option to Purchase which outlines conditions under which WMB Realty Company, LLC as assignee of Beaufern, under the Agreement for Purchase and Sale of Real Property has a right to force Forsyth County to repurchase Lot 1 of Tanglewood Business Park and the conditions under which Forsyth County has a right to repurchase or can exercise an option to repurchase the said property; and

WHEREAS, these provisions were not included in the original Agreement for Purchase and Sale of Real Property relating to Lot 1;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the Chairman or County Manager and Clerk to the Board to execute, on behalf of Forsyth County, the attached Agreement for Option to Purchase, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the Forsyth County Attorney.

Adopted this 12th day of April 2018.

DRAFTED BY: Eric T. Spose, Esq	A 14.85 acre portion of Tax Block:4203; Lot 107A, PIN# 5881-79-7650.00
Mail after recording to:	
Beaufurn, LLC	
5269 US Highway 158	
Advance, North Carolina 27006	

AGREEMENT FOR OPTION TO PURCHASE

THIS AGREEMENT is made this ____ day of _____, 2018 by and between the **COUNTY OF FORSYTH**, a political subdivision of the State of North Carolina having an address of 201 N. Chestnut Street, Winston-Salem, NC 27101 (hereinafter the "County"), and **WMB REALTY COMPANY, LLC**, a North Carolina limited liability company having an address of 5269 US Highway 158, Advance, North Carolina (hereinafter "WMB").

WITNESSETH:

WHEREAS, the County owns that certain real property in Forsyth County more particularly described on Exhibit A attached hereto and incorporated herein (the "Property") and such Property contains a certain tract of land consisting of approximately 14.8498 acres of land, having a street address of 7545 Topsider Drive, Clemmons, NC 27012 more particularly shown at Plat Book 67, Page 76, Forsyth County Registry, and identified as Tax Parcel 5881-79-7650.00, in the property tax records of Forsyth County as presently constituted (the "Lot 1");

WHEREAS, the County seeks to develop the Property as a business park to be called "Tanglewood Business Park" (the "Park");

WHEREAS, WMB, by assignment from Beaufurn, LLC, agreed to purchase Lot 1 from the County in accordance with that certain Agreement for Purchase and Sale of Real Property dated January 27, 2017 (the "Contract");

WHEREAS, the County conveyed Lot 1 to WMB by that certain General Warranty Deed dated _____ (the "Deed"); and

WHEREAS, the parties would like to set forth certain covenants, rights, and responsibilities of the County and WMB regarding the future development of Lot 1 and the Park (the "Property").

NOW THEREFORE in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINED TERMS. All capitalized terms used in this Agreement, but not otherwise defined, have the same meanings as are given to such terms in the Contract.
2. AUTHORIZATION. All action on the part of the respective each party and its nominees, officers, managers and members necessary for the authorization, execution and delivery of this Agreement and the performance of all obligations of the respective party hereunder has been taken. This Agreement

constitutes a valid and legally binding obligation of the parties, enforceable in accordance with its respective terms. Each party represents and warrants that all consents of any third parties required for the warranting party to execute and deliver this Agreement or to perform its obligations hereunder have been obtained.

3. STORMWATER POND. Grantor agrees to build a stormwater retention pond (the "Stormwater Pond") for the benefit of the Property. The Stormwater Pond shall be deemed constructed for purposes herein when _____.
4. GRANTEE'S RIGHT TO FORCE REPURCHASE. Grantee may, in Grantee's sole discretion, require Grantor to repurchase the Property from Grantee upon the terms and conditions of this Agreement by providing written demand to Grantor within thirty(30) days of the applicable due date below:
 - a. Sewer Services. If sanitary sewer services are not extended and made available to the Property by the City/County Utilities Commission on or before December 31, 2020. For purposes herein, sanitary sewer service shall be deemed extended and available to the Property when _____.
 - b. Road Extension. If the extension of Topsider Drive over the 60' Access Easement shown in Plat Book 67, Page 76, Forsyth County Registry (the "Road Extension") along with its related infrastructure needed to meet the requirements of the building to be developed on the Property (including the following utilities: water, storm drainage systems, fire hydrants, street lights, curb and gutter, and sidewalks) and a Stormwater Pond, if applicable, are not constructed for use by the Grantee in connection with the Property by December 31, 2019. For avoidance of doubt, the Road Extension shall be constructed to meet North Carolina Department of Transportation Standards and shall be deemed constructed for purposes herein when _____.

In the event that Grantee exercises its option to require Grantor to repurchase the Property from Grantee pursuant to terms provided in this paragraph, Grantor shall close on such repurchase in accordance with the provision of paragraph 7 below within sixty (60) days of receipt of written demand for repurchase from Grantee.

5. GRANTOR'S RIGHT TO REPURCHASE. Should Grantee receive a bona fide written offer for the purchase of the Property or any portion thereof prior to satisfying the Building Conditions (as defined herein), Grantee shall give written notice to Grantor specifying all terms of such offer (a "Grantee Offer Notice"). Upon receipt of such notice, Grantor shall have the exclusive option, but not obligation, to purchase the Property in accordance with the conditions of this Agreement. For the purposes of this Agreement, "Building Conditions" shall mean before constructing an industrial building consisting of at least 80,000 sf (the "Building"). Further, if the Building Conditions are not satisfied within five (5) years from the date public utilities are delivered to the Property (the "Building Conditions Expiration"), Grantor shall have the right to exercise the option to purchase the Property as provided in paragraph 6 below.
6. REPURCHASE OPTION EXERCISED BY GRANTOR. Grantor shall have thirty (30) days from the receipt of a Grantee Offer Notice to provide Grantee with written notice of its intention to exercise its option to repurchase the Property. Furthermore, Grantor shall have the right at any time after the Building Conditions Expiration to provide Grantee with written notice that it intends to exercise its intention to exercise its option to repurchase the Property. Grantee shall deliver title to the Property to Grantor within sixty (60) days of receipt of Grantor's written notice unless otherwise stated in Grantor's written notice.

7. PURCHASE PRICE. The purchase price for any repurchase by Grantor in accordance with this Agreement shall be determined by and appraisal conducted by a mutually agreed upon commercially licensed real estate appraiser that is certified by the Appraisal Institute and who shall have had at least ten (10) years continuous experience in the business of appraising real estate in the Forsyth County, North Carolina submarket. The costs of appraisal shall be split equally by the parties.
8. ENTIRE AGREEMENT. Unless otherwise specifically agreed in writing, Agreement and the Exhibit hereto represent the entire understanding of the parties with reference to the transactions set forth herein and supersede all prior warranties, understandings and agreements heretofore made by the parties, except to the extent they are contemplated by the Deed, and neither this Agreement nor any provisions hereof may be amended, waived, modified or discharged except by an agreement in writing signed by the party against whom the enforcement of any amendment, waiver, change or discharge is sought.
9. COUNTERPARTS; FACSIMILES. This Agreement may be executed in any number of counterparts, including facsimiles thereof, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. A counterpart executed by a party and transmitted to another party by facsimile or other electronic means will have the same effect and be as binding as the delivery of the original counterpart.
10. ASSIGNMENT OF AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
11. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**SIGNATURE PAGE TO
AGREEMENT FOR OPTION TO REPURCHASE**

IN WITNESS WHEREOF, the parties hereunto have caused this instrument to be executed by its duly authorized representative as of the date first written above.

COUNTY OF FORSYTH

A political subdivision of the State of North Carolina

By: _____ (SEAL)
Jack Dudley Watts, Jr., County Manager

WMB REALTY COMPANY, LLC

A North Carolina limited liability company

By: _____ (SEAL)
Name: _____
Title: _____

EXHIBIT A

THE PROPERTY

A tract or parcel of land lying in Clemmons Township, Forsyth County, North Carolina, more particularly described as follows:

BEGINNING at an existing concrete monument with rebar in the East right-of-way line of the Southern Railroad right-of-way along Idols Road at the Northwest corner of property conveyed to Duke Power Company by deed recorded in Book 640, Page 290, Forsyth County, North Carolina Registry and located North 29° 32' 41" East 147.80 feet from milepost 131; running thence with said right-of-way line 1) North 02° 47' 36" East 654.55 feet to an existing iron, 2) North 02° 58' 01" East 405.10 feet to a point, 3) North 02° 50' 11" East 478.82 feet to a point, 4) North 03° 15' 21" East 100.00 feet, 5) North 04° 58' 01" East 100.00, 6) North 08° 02' 52" East 100.00 feet, 7) North 11° 12' 39" East 100.00 feet, 8) North 14° 13' 02" East 100.00 feet, 9) North 17° 14' 20" East 100.00 feet, 10) North 20° 21' 16" East 100.00 feet, 11) North 23° 31' 21" East 100.00 feet, 12) North 26° 41' 12" East 100.00 feet, 13) North 29° 55' 01" East 100.00 feet, 14) North 32° 04' 38" East 100.00 feet, 15) North 34° 45' 52" East 100.00 feet, 16) North 40° 33' 46" East 100.00 feet, 17) North 41° 47' 11" East 100.00 feet, 18) North 44° 26' 45" East 100.00 feet, 19) North 45° 52' 56" East 100.00 feet, 20) North 45° 50' 29" East 413.01 feet, 21) North 46° 10' 22" East 100.00 feet, 22) North 46° 54' 53" East 100.00 feet, 23) North 50° 26' 14" East 100.00 feet, 24) North 54° 28' 58" East 100.00 feet, 25) North 59° 40' 47" East 100.00 feet to an existing iron marking the intersection of said right-of-way with a West line of property conveyed to Joseph R. Poindexter, Jr., et al by deed recorded in Book 1040, Page 578, Forsyth County, North Carolina Registry; running thence with the West line of said property conveyed to Poindexter South 03° 57' 16" East 337.92 feet to a stone; thence with another West line of said property conveyed to Poindexter, South 25° 58' 16" East 193.43 feet to a stone; thence with a South line of said property conveyed to Poindexter, North 87° 44' 27" East 732.02 feet to a stone; thence with a Southwest line of said property conveyed to Poindexter South 40° 50' 30" East 1913.72 feet (crossing an iron at 925.29 feet) to a stone in the Northwest line of property now or formerly owned by E. E. Phelps; thence with the Northwest line of said property now or formerly owned by E. E. Phelps South 46° 25' 16" West 819.96 feet to a stone marking the corner of said property now or formerly owned by E. E. Phelps; thence with the Southwest line of said property now or formerly owned by E. E. Phelps South 39° 24' 35" East 90.26 feet to a stone marking a corner of property conveyed to Richard V. Phelps by deed recorded in Book 1280, Page 1131, Forsyth County Registry; thence with a Northwest line of said property conveyed to Richard V. Phelps, South 50° 22' 28" West 310.95 feet to a stone; thence with a North line of said property conveyed to Richard V. Phelps, North 70° 52' 30" West 865.12 feet to an existing 3/4 inch pinched iron in pile of stone; thence with a Northeast line of said property conveyed to Richard V. Phelps, North 40° 47' 04" West 517.30 feet to a

stone 3-inch subsurface; thence with a Northwest line of said property conveyed to Richard V. Phelps and falling in with the Northwest line of property conveyed to Lily Davis LaCoste Tesh, et al by deed recorded in Book 1781, Page 2364, Forsyth County Registry, South 25° 25' 40" West 1388.60 feet to an iron; thence with the South line of said property conveyed to Lily Davis LaCoste Tesh, et al South 87° 44' 05" East 566.11 feet to a 24-inch dead pine tree marking a corner of property conveyed to Duke Power Company by deed recorded in Book 640, Page 290, Forsyth County Registry; thence with a West line of said property conveyed to Duke Power Company South 16° 55' 03" West 842.63 feet to a nail set at base of existing iron; thence with a North line of said property conveyed to Duke Power Company North 64° 15' 17" West 1445.09 feet to the point and place of BEGINNING containing 169.726 acres more or less as shown on Map for Tanglewood Park Foundation, Inc., prepared by Larry L. Callahan Surveying Co., Inc., dated December 22, 1993 and being further known and designated as tract labeled "Formerly Property of R. Murray Lybrook" as shown on Map entitled "Property of R.J. Reynolds Tobacco Co.," as recorded in Plat Book 18, Page 176, Forsyth County Registry and being further known and designated as Tax Lots 1, 2, 3 and 4 of Tax Block 4204 and Tax Lots 26 and 27 of Tax Block 4203, Forsyth County City Tax Maps as presently constituted.